

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)

Plaintiff,)

v.)

MOTOROLA, INC. and)
NEXTEL COMMUNICATIONS, INC.)

Defendants.)

Case No. 1:94CV02331 (TFH/JMF)

**JOINT MOTION TO STAY PROCEEDINGS IN CONNECTION WITH NEXTEL'S
MOTION TO VACATE CONSENT DECREE AND TO ESTABLISH NOTICE AND
PUBLIC COMMENT PROCEDURES FOR MOTION TO MODIFY FINAL JUDGMENT**

Plaintiff United States of America and Nextel Communications, Inc. ("Nextel") jointly move this Court to enter an order to (1) stay the proceedings in connection with Nextel's pending Motion to Vacate Consent Decree; and (2) establish procedures for public comment on and the Court's consideration of the Motion To Modify Final Judgment, and in support of this motion, state as follows:

1. On February 16, 1999, Nextel filed a motion to vacate the consent decree ("Final Judgment") entered by this Court on July 25, 1995. An evidentiary hearing on Nextel's motion is scheduled to begin June 14, 1999. Nextel has now moved to modify the Final Judgment, and the United States has tentatively agreed to the modification. As a matter of policy, however, the Antitrust Division does not finally consent to the modification of judgments without public notice

and an opportunity for public comments.

2. Therefore, the parties have entered into a stipulation, filed concurrently, agreeing to stay the proceedings in connection with Nextel's Motion To Vacate Consent Decree, and setting forth a procedure for notice and comments on the proposed modification of the decree. This procedure is designed to provide all potentially interested persons with adequate notice that a motion to modify the Final Judgment is pending, adequate notice of the reasons in support of the proposed modification, and an adequate opportunity to comment thereon. *See United States v. Swift Co.*, 1975-1 Trade Cas. (CCH) ¶60,201, at 65,703 (N.D. Ill. 1975). In addition to this procedure, the United States intends to provide prompt notice of the proposed modification to amici curiae in connection with Nextel's Motion to Vacate Consent Decree and, to the extent they can be located, all persons who submitted comments in connection with the entry of the initial Final Judgment. The parties intend to implement the procedure for modification promptly and request the Court to rule on the proposed modification as quickly as possible after the procedure is completed.

3. The parties have agreed that interested persons should be given an opportunity to submit comments concerning the proposed modification of the Final Judgment. Therefore, the United States and Nextel jointly move the Court to order that:

- a. Nextel publish at its own expense a notice in two consecutive issues of (1) *The Wall Street Journal* and (2) *Communications Week International*, and file proof of such publication with the Court;
- b. The United States publish a notice in the *Federal Register*;
- c. Copies of all comments received by the United States and the United States' response thereto shall be filed within thirty (30) days after expiration of the thirty

day comment period; and

- d. This Court will not rule upon Nextel's motion before it has received copies of any comments and the United States' response to those comments.

A proposed Order to Stay Proceedings and Establish Notice and Comment Procedures is attached to this motion.

DATED:

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

/s/

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FOR NEXTEL COMMUNICATIONS, INC.

/s/

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Dated: June 13, 1999